

## **REMARKS**

Claims 110-134 are pending.

Claims 110-134 are rejected.

Claims 116-118 are rejected under 35 USC 112, second paragraph.

Claims 110-115, 119, 121, 122, 125, 130, 131 and 133 are rejected under 35 USC 102(e).

Claims 120, 123, 124, 126-128, 129, 132, and 134 are rejected under 35 USC 103(a).

Claims 110, 113, 115-119, 121-123, 125, 131, and 134 have been amended.

No new matter has been added.

Claims 110-134 remain in the case for consideration.

Applicant requests reconsideration and allowance of the claims in light of the above amendments and following remarks.

### **Claim Amendments**

Claims 110, 113, 115-119, 121, 125, 131, and 134 have been amended. Support for the amended claims can be found in the application as filed, for example, on pages 30-35. No new matter has been added.

### **Claim Rejections – 35 USC §112**

Claims 116-118 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 116-118 have been amended to remove reference to a snapshot as referred to by the Examiner. The Applicant respectfully requests that the Examiner withdraw the rejection of claims 116-118.

### **Claim Rejections – 35 USC §102**

Claims 110-115, 119, 121, 122, 125, 130, 131, and 133 are rejected under 35 U.S.C. 102(e) as being anticipated by Wahl et al. (U.S. Patent No. 6,324,654).

As amended claim 110 recites “a remote buffer coupled to the communications link and configured to receive and store the data changes and the associated meta-data blocks from the local buffer.” That is, both the data changes and the associated meta-data blocks that are stored in the local buffer are transmitted over the communications link to the remote buffer.

In contrast, in Wahl, only data is transmitted. For example, in Wahl, each entry of the writelog device 18 consists of data and a header. Wahl, col. 7, ll. 18-19. However, only the

data entries in the writelog device 18 are described as being sent across the network 20. Wahl, col. 7, ll. 22-24. There is no indication that the header is also sent across the network 20. Accordingly, Wahl does not teach each and every element of claim 110. The Applicant respectfully requests that the Examiner withdraw the rejection of claim 110 and dependent claims 111-115, 119, 121, 122, 125, 130, 131, and 133.

### **Claim Rejections – 35 USC §103**

Claims 120, 123, 124, 126-128, 129, 132, and 134 are rejected under 35 USC 103(a) as being unpatentable over various combinations of Wahl, Tamer et al. (U.S. Patent No. 6,035,412), a first Official Notice, Ofek et al. (U.S. Patent No. 7,107,395), Wilson (U.S. Patent No. 6,718,347), and a second Official Notice.

However, none of Tamer, Ofek, Wilson, the first Official Notice, and the second Official notice cure the deficiencies of Wahl with respect to parent independent claim 110. For example, Wahl, Tamer, Ofek, Wilson, the first Official Notice, and the second Official notice do not render obvious the transmission of the meta-data blocks of the remote buffer along with the data changes to the remote buffer as recited in claim 110. The Applicant respectfully requests that the Examiner withdraw the rejection of claims 120, 123, 124, 126-128, 129, 132, and 134.

### **Official Notice**

In connection with the above rejections under 35 USC 103(a), the Examiner relied on Official Notice. The Examiner is reminded that “Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. Furthermore, as noted by the court in Ahlert, any facts so noticed should be of notorious character and serve only to “fill in the gaps” in an insubstantial manner.” MPEP 2144.03 E. Accordingly, the Applicant traverses the Official Notice and demands that the Examiner produce authority for the statements to conform with requirements established under the MPEP and in common law.

In particular, the Examiner took Official Notice regarding the use of checksums regarding data in a network. Although the Applicant agrees that checksums have been used in network transmissions, for example, a checksum in a TCP packet, the fact that a checksum can be used in networked communications does not necessarily mean that a checksum will be used as a signature received by a local buffer in connection to a data change made to a remote mirror as recited in claim 123.

### CONCLUSION

For the foregoing reasons, reconsideration and allowance of the pending claims of the application as amended is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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